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The Commonwealth of Massachusetts
Department of Revenue
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You request a series of rulings as to the application of the Massachusetts sales tax to a nature education program.

1. You state that the program would consist of letters relating your wilderness experiences. The letters would be sent out weekly to children, schools, and non-profit groups. The letters would be mimeographed on sheets of 5½-by-8½-inch paper. The letters usually relate a single wilderness experience or describe some aspect of wildlife. The letters include small pen-and-ink illustrations, and photographs are occasionally enclosed.

Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempted. Section 6(m) of Chapter 64H exempts from the sales tax sales of newspapers and magazines.

The Massachusetts Supreme Judicial Court has held that a newspaper "is distributed at periodic intervals and contains matters of interest to a significant segment of the public." Greenfield Town Crier v. Commissioner of Revenue, 385 Mass. 692, 696 (1982). The term "newspaper," as construed by the Supreme Court of Florida, should be given the understanding in general and common usage. Gasson v. Gay, 49 So. 2d 525, 526 (Fla. 1950).

The nature education letters do not resemble in format or content "newspapers" as the term is understood in general and common usage. While the letters will be distributed at periodic intervals, the contents are of limited interest to a relatively small segment of the public.

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The term "magazines" has been defined as "pamphlets published periodically, containing miscellaneous papers or compositions." See Houghton v. Payne, 194 U.S. 88, 101 (1904) (dictum).

The nature education letters usually are concerned with only one topic and are written by only one person. The letters do not resemble what is commonly understood to be magazines.

Based on the foregoing, it is ruled that the nature education letters are not newspapers or magazines, and the sales of the letters generally are subject to the sales tax.

2. You state that you intend to sell subscriptions to the nature education program to schools and non-profit groups. The schools and groups would be given permission to reproduce the letters if they so desired. You ask whether sales of the letters to schools and non-profit groups are subject to the sales tax.

Section 6(d) of Chapter 64H exempts from the sales tax sales to the Commonwealth, any political subdivision thereof, or its agencies.

Section 6(e) of Chapter 64H exempts from the sales tax

[s]ales to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended and in effect for the applicable period; provided, however, that such sales shall not be exempt unless (1) the tangible personal property which is the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (2) such corporation, foundation, organization or institution shall have first obtained a certification from the commissioner stating that it is entitled to such exemption, and (3) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate.

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Based on the foregoing, it is ruled that sales of the nature education letters to Massachusetts public schools are not subject to the sales tax. Sales of the letters to organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are not subject to the sales tax if the letters are used in the conduct of the organizations' activities, the organizations have obtained current certifications from the Commissioner, and you keep complete records of such sales.

3. You ask whether sales of the nature education letters to out-of-state subscribers are subject to the sales tax.

Section 6(b) of Chapter 64H exempts from the sales tax sales of tangible personal property

which the vendor is obligated under the terms of any agreement to deliver (1) to a purchaser outside the commonwealth or to a designee outside the commonwealth of a purchaser outside the commonwealth or (2) to an interstate carrier for delivery to a purchaser outside the commonwealth or to a designee outside the commonwealth of a purchaser outside the commonwealth."

Based on the foregoing, it is ruled that sales of nature education letters are not subject to the sales tax if the designated recipient of the letters and the purchaser of the subscription, if different from the recipient, are located out-of-state.

4. You ask whether sales of your nature education letters to newspapers as free-lance stories are subject to the sales tax.

The definition of "sale" includes

[t]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons,

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and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. (G.L. c. 64H, § 1(12)(f)).

The sale to a newspaper of a free-lance story is the furnishing of information which may or may not be personal or individual in nature. Therefore, the sale of a free-lance story to a newspaper is a "sale" within the meaning of Chapter 64H, Section 1(12)(f).

Chapter 64H, Section 1(13) states that the term "retail sale" does not include "personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made."

The sale of a free-lance story is a sale of information. The value of the paper on which is written the free-lance story is an inconsequential element of the value of the transaction.

Based on the foregoing, it is ruled that the sale of a free-lance story is not within the definition of "retail sale" and is not subject to the sales tax.

5. You also ask whether payments which you characterize as "donations" are subject to the sales tax. An adult would make a "donation" on behalf of a specific child, and in return you would send nature education letters for as long as the donation would cover the cost of a subscription. In most instances, the child would be related to the adult making the donation. The donations are in essence the same as the individual subscriptions.

Based on the foregoing, it is ruled that the "donations" on behalf of specific children are subject to the sales tax.

Very truly yours,



Commissioner of Revenue

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